IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 32025 of 2006(K)

APPL.26/2004 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

AL AKBAR ENTERPRISES AND TRAVEL
SERVICES PRIVATE LIMITED,
KANNUR ROAD, CALICUT-1, REP. BY ITS MANAGING
DIRECTOR.

BY ADV. SRI.V.G.ARUN

RESPONDENTS:

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1. STATE BANK OF TRAVANCORE,
KOZHIKODE MAIN BRANCH,
REP. BY ITS CHIEF MANAGER.

2. THE DEBTS RECOVERY TRIBUNAL,
ERNAKULAM, REP. BY ITS REGISTRAR.

BY SRI.SATHISH NINAN- SC.SBT.
SRI.SANTHOSH MATHEW-SC.SBT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).NO.32025 of 2006-K

Dated this the 4th day of December, 2006

JUDGMENT

The petitioner has approached this Court, challenging Ext.P8 interim order passed by the second respondent Debts Recovery Tribunal. The brief facts of the case are as follows:

2. The petitioner is in default to the first respondent bank in relation to a loan transaction. The security offered for the said loan was taken over by the bank, under Sec.13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. The petitioner has filed an appeal under Sect.17 (1) of the above-said Act before the second respondent. During the pendency of the appeal, on paying Rs.10 lakhs the building was handed over to the petitioner. Thereafter, the matter was posted for settlement. Since the second respondent found that no settlement could be arrived at, directed the petitioner to surrender the building to the first respondent, as per Ext.P8. This writ petition is filed challenging Ext.P8. The petitioner submits that since the appeal is already pending, the present order passed is unjust and he prays for quashing that

order.

2. The learned Standing Counsel who took notice for the first respondent submitted that the hearing of the appeal was delayed by the petitioner by making a claim that the settlement is going on, but so far no settlement could be arrived at as the petitioner has failed to offer a reasonable amount for closing the loan account. Since the appeal is pending, I think it may not be proper for passing an order in the nature of Ext.P8 which has the effect of vacating the interim order already granted. But, the learned counsel for the petitioner pointed out that the balance amount due from the petitioner will approximately come to Rs.23 lakhs. Therefore, the petitioner may be directed to pay some more amount for getting back the building.

3. Having regard to the facts of the case, I feel that the interim order handing over the building to the petitioner should be restored till the disposal of the appeal. But, in view of the substantial amount remaining unpaid by the petitioner, it is ordered that if the petitioner pays Rs.5 lakhs (Rupees five lakhs only) to the first respondent within one month from today, Ext.P8 order will stand quashed. If the amount is not paid as directed above, Ext.P8 will be revived and the petitioner will be bound to

hand over the possession of the building to the first respondent. The second respondent shall expedite the hearing of Ext.P5 appeal and dispose of the same on merits as expeditiously as possible.

The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE.

MS